

# MONTANA **VEBA**

HEALTH REIMBURSEMENT ACCOUNT

EMPLOYER ADOPTION AGREEMENT  
STATE OF MONTANA HEALTH  
REIMBURSEMENT ACCOUNT AND TRUST  
"MONTANA VEBA HRA"

Employer: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contact for Payroll/Contribution Matters

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

## Provisions.

1. Formal Authorization of Employer. The Employer, by formal action of its governing body or other authorized action, has formally established an employee benefit plan or arrangement pursuant to which it desires to make one or more contributions to the State of Montana Health Benefit Plan and Trust (the "Plan" and the "Trust"). Through this Employer Adoption Agreement, the Employer applies for participation in the Plan and Trust, to be effective only if accepted by the Department of Administration.

2. Governing Documents. The Employer acknowledges and agrees that its initial and continuing participation shall be subject to the terms and provisions of the Plan and Trust including any amendments made or to be made thereto, that those provisions are to be interpreted by the Fiduciaries of the Plan and Trust, and that the Department and Administrator is to establish such rules, policies, practices and procedures as it deems appropriate for the administration of the Plan, all of which shall govern the Plan and Trust and be binding upon participating Employers and their covered Employees. The Employer

will receive copies of the Plan Document and Enrollment Form at the time the signed Adoption Agreement is forwarded from the Department to the Employer. The Trust is available upon request from the Department of Administration.

The Plan, the Trust, the Employer Adoption Agreement and the Enrollment Form are all parts of a single, integrated employee benefit system and shall be construed together. In the event of any conflict between the terms of these documents, such conflict shall be resolved first by reference to the Trust, except as more specifically addressed in the Plan, then the Plan, then the Employer Adoption Agreement, then the Enrollment Form.

3. Defined Terms. Capitalized terms in this Employer Adoption Agreement shall have the definition given them in the Plan and Trust.

4. Contributions. The Employer acknowledges and agrees that it has the responsibility to make contribution(s) to the Trustee in accordance with whatever obligations, policies or procedures have been established by the Employer (pursuant to bargaining or otherwise) and that neither the Trustee, Department, Administrator, their officers, employees or agents, or anyone acting on behalf of or with respect to the Plan and Trust has the right, duty or power to determine the amount to be paid to the Trustee or collect the amount to be contributed. Rather, the Trustee's, Department's and Administrator's rights, duties or powers arise and apply only with respect to contributions actually paid to the Trustee.

Under Montana statute, provisions are made to convert excess sick leave balances to an Employer contribution to the Plan. This applies to employers who are subject to 2-18-618, MCA. The participating Employer shall provide for an Employee in a group defined as Montana VEBA HRA eligible to designate annually how many hours (if any) of the Employee's sick leave balance in excess of 240 hours will be automatically converted to an Employer contribution. Employees may only convert sick leave hours accumulated in excess of 240 hours and up to a maximum number of hours prescribed by the participating Employer. Upon termination of an eligible Employee's employment, the Employee's entire unused sick leave balance is automatically converted to an Employer contribution to the Employee's Account. Sick leave converted to an Employer contribution is at the rate of one-fourth of the pay based on the Employee's salary or wage at the time of the sick leave conversion times the total number of accumulated sick leave hours to be converted. Once sick leave has been converted, it may not be credited back to the Employee in the form of sick leave credits or as a lump-sum payment.

In addition, other forms of Employer contribution, including but not limited to flat dollar amounts or flat percentage of salary per Employee of a participating group, or vacation payouts, as allowed by statute and subject to agreement between the Employer and Employee(s). These additional forms of Employer contribution may be subject to a bargaining unit agreement or similar agreement if one applies with respect to such benefits and/or may not be made in a manner prohibited by applicable law.

5. Discontinuance/Termination. The Employer acknowledges and agrees that although it can discontinue or terminate contributions to the Plan and Trust and can

terminate its participation in the Trust upon written notice to the Administrator, assets already contributed to the Trust cannot be withdrawn or transferred other than:

- a) A direct in-kind transfer of assets to a substantially similar IRC Section 501(c)(9) trust;
- b) A series of installment payments over a set period of assets from the Trust attributable to this Plan to another IRC Section 501(c)(9) trust;
- c) An immediate cash payment to another IRC Section 501(c)(9) trust or another program providing qualified health care benefits for the Members of this Plan, subject to any contractual adjustments due upon such a cash-out; or
- d) Any other method permitted by IRC Section 501(c)(9).

6. Allocation of Contributions. At the time any contribution is paid to the Trustee, the Employer shall direct the Administrator as to which Member Account(s) the contribution is to be allocated. In the absence of any such direction, the Administrator shall contact the Employer for such direction.

7. Basis for Contributions. The Employer has attached hereto a copy of the provision(s) of the bargaining agreement, Employer policy or other statement or action setting forth the basis upon which contributions are to be made to the Trust with respect to Member Accounts and which groups of Employees are to be covered by the Plan.

The Employer represents that the contributions are not discriminatory in favor of any class of Employees to the extent such discrimination would be prohibited by applicable law (including IRC § 501(c)(9)) and that there has been no individual decision making by any Employee with respect to coverage by the Plan or the establishment of or contribution to that person's Member Account.

8. Governmental Employer. The Employer acknowledges that the Plan is available only to employers whose benefit plan constitutes a "governmental plan" under ERISA. The Employer represents that it is a governmental employer and agrees that its initial and continuing participation is contingent upon it being a governmental employer.

9. Indemnification. The Employer agrees, to the fullest extent permitted by applicable law, to indemnify and hold harmless the Trustee, Department and Administrator against all costs, expenses, liabilities and damages resulting from any misrepresentation, negligent action or inaction, or breach of this Employer Adoption Agreement, the Plan, the Trust or any rules, policies or procedures established by the Department or Administrator, on the part of the Employer or its officers, employees or agents. Neither Department, Administrator, Trustee and other service providers retained by the Department nor their affiliates, successors or assigns shall have any liability, duty or other obligation with respect to actions or omissions (including incomplete or incorrect data provided by the Employer or Members) of the Employer or of any concurrent or predecessor trustee, custodian, or other investment or service provider.

10. No Guarantees. The Employer acknowledges and agrees that neither the Department, the Administrator nor the Trustee guarantees the Trust or any Member Account thereof from loss or decline in value, nor the payment of any amount which may become due to any person hereunder. Nothing contained in the Trust shall constitute a guarantee by the Department, the Administrator or the Trustee that the assets of the Trust will be sufficient to pay any benefit to any person or make any other payment; payments to be paid from the Trust are limited to the assets remaining in the Member Account at the time payment is made.

11. Service Providers, Compensation and Expenses. The Employer acknowledges and agrees to the appointment and reasonable compensation of the Trustee, Department and Administrator and other service providers retained by the Department with respect to administration of the Plan and Trust and acknowledges and agrees to the payment of their fees and expenses from the Plan and Trust, to be allocated to Member Accounts in the manner determined by the Department.

\* \* \*

IN WITNESS WHEREOF, the Employer has approved this Employer Adoption Agreement, as evidenced by the signature below of its authorized officer, to be effective if and when executed below by the Department as accepted.

Employer: \_\_\_\_\_

By: \_\_\_\_\_  
authorized signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted by State of Montana Department of Administration ("Department"):

By: \_\_\_\_\_  
authorized signature

Date: \_\_\_\_\_